for the purpose of collecting or delivering the "goods", makes use of his own private vehicle. he is committing an offence under this section. But there was no evidence whatsoever in this case that the pineapples were to be delivered to the labourers in part payment or remuneration for their services. Again, the learned Deputy Public Prosecutor said that it was common knowledge that estate contractors very often ran estate shops, and it might be that the pineapples were intended for sale. Again, there was no evidence whatsoever to support any such suggestion.

It was for these reasons that I allowed this appeal, quashed the conviction and fine, and set aside the order of disqualification.

Appeal allowed.

Solicitors: *Lim, Lim & Oon.*

PUBLIC PROSECUTOR v. NAIKAN

[O.Cr.J. (Ismail Khan J.) November 3, 1960]

[Seremban — Criminal Trial No. 4 of 1960]

Criminal Law and Procedure — Confessions — Admissibility — Whether freely and voluntarily made — Inducement — "Better tell the truth" — Interval between confessions — Whether material.

This case involved the question of the admissibility of two confessions made by the accused — one to the manager of an estate and another to a Magistrate. The main grounds of the defence were that the confessions had been obtained by inducement as the manager had used the words "better tell the truth," and as the interval between the first confession and the second was only two hours (during most of which time the manager was with the accused) the interval was too short for the impression under which the first confession was made to be erased before the second confession was recorded.

Held: (1) there was sufficient inducement to deprive the confession of its voluntary character since the manager in relation to the accused was a person of authority. The words "you better tell the truth" and equivalent expressions have acquired a fixed meaning as if a technical term and have always been held to import a threat or promise;

(2) the two hours' interval between the confessions is too short to have removed the influence he was under at the time he made his confession in the circumstances of this case.

Cases referred to:—

(1) *R.* v. *Doherty* (1874-77) 13 Cox C.C. 23, 24.

(2) *Abdullah bin Awang Bongkok* v. *Public Prosecutor* [1956] M.L.J. 90, 91.

(3) *R.* v. *Sherrington* (1838) 2 Lewin C.C. 123.

RULING ON ADMISSIBILITY OF CONFESSIONS.

Wan Suleiman bin Pawan Teh (Deputy Public Prosecutor) for the *Public Prosecutor.*

Edgar Joseph Jr. for the accused.

Ismail Khan J.: The prosecution sought to bring in evidence two confessions made by the accused, firstly, to the Manager of Sungei Mahang Estate, Mr. Maw, at his office and, secondly, to the Magistrate, Seremban, Mr. Tan Chin Beng, at the Magistrate's Court, both on the same day, 4th March, 1960.

The defence objects to the admissibility of the confessions on the ground that they were obtained by inducement, the inducement complained of being the promise of help by Mr. Maw, P.W.1, to the accused.

The facts are that on 9th February, 1960, the accused who was working in the Kubang Division of Sungei Mahang Estate was arrested and detained at the police station, Mantin, for two weeks, at the end of which period he was released. He was rearrested on 4th March, 1960. On that day, before his rearrest, the accused saw P.W.1 at his office and told him that he (the accused) was in difficulties and wanted help. According to P.W.1 his interview with the accused was in the form of question and answer and that it took about three-quarters of an hour. P.W.1 said that he suggested by his manner that the accused should answer his questions truthfully and that he gave the accused the impression that he would help him to the best of his ability. The accused then admitted that he had shot the woman mistaking her for a pig. He also said that he had dug a pit and shot the woman. P.W.1 admitted that it was possible that he could have exhorted the accused to speak the truth and that he could have used the words "better tell the truth". He could not say at what stage of the interview he had used those words and therefore the possibility that they were mentioned at the beginning of the interview cannot be ruled out. He also said in answer to the Court that in his interview with labourers on the estate it was his practice to urge them to speak the truth.

The words "you had better tell the truth" and equivalent expressions have acquired a fixed meaning as if a technical term, and have always been held to import a threat or promise. See *Woodroffe and Ameer Ali on Evidence,* (9th Edn.), pages, 283 — 284.

It is not in dispute that P.W.1 is in relation to the accused a person of authority. I am therefore satisfied that there was sufficient inducement to deprive the confession of the accused to P.W.1 of its voluntary character so as to render it inadmissible in evidence.

With regard to the second confession, that is, to the Magistrate, Mr. Tan Chin Beng, P.W.3, it is contended by Mr. Joseph for the defence that the inducement which had led to the first confession continued to operate upon the mind of the accused throughout the time when he made the second confession. He argued that the interval between the two confessions was only a matter of two hours for the most part of which period P.W.1 was with the accused, and that the interval was too short for the impression under which the first confession was made to be

erased before the second confession was recorded. He referred to the case of *The Queen* v. *Doherty*[1]. In that case a prisoner had been told by a constable at 10 a.m. that it would be better for him to tell the truth and not to put people to the extremities as he was doing. An admission by this prisoner to another constable after 6 o'clock of the evening of the same day was not allowed to be given in evidence although the second constable had previously cautioned the prisoner.

Che Wan Suleiman for the prosecution contended that the improper influence under which the first confession was made was removed by the questions put to the accused by P.W.3 and the accused's answers thereto. He cited the case of *Abdullah bin Awang Bongkok* v. *Public Prosecutor*[2]. In that case the Memorandum of Enquiry recorded by the Magistrate was before the Court as well as the answers to the further questions put to the appellant by the Magistrate which made it plain beyond any doubt that the statement was made freely and voluntarily and that the effect of a promise alleged to be made by an unknown Malay constable was removed by such careful questions put to the appellant by the Magistrate and that it had appeared from the answers to the questions that no promise was made. In this case it is true that from the evidence of P.W.3 that he put questions to the accused and was satisfied from his answers that his statement was voluntary and that it was not prompted by any inducement, threat or promise. That is of course not enough and this Court will have to satisfy that the confession to the Magistrate was in fact a free and voluntary confession. It is necessary for me to consider the whole of the evidence and the particular circumstances of this case. There is evidence that the accused on his first arrest was detained for a period of two weeks at the Mantin police station, during which period he made no attempt to volunteer any confession. It was only on 4th March, 1960, after he had seen P.W.1 and had asked for help, and as a result of the promise given, that he made a statement to P.W.1 and later to P.W.3. In my opinion, the two hours interval between the two confessions is too short to have removed the influence he was under at the time he made his confession to P.W.1 and, in the words of Patteson J., in *R.* v. *Sherrington*[3], cited in *Roscoe's* Criminal Evidence (16th Edn.) pp. 47, 48 "to allow of the supposition that it was the result of reflection and voluntary determination".

Finally, we have the evidence of P.W.3 that after the accused had given his statement and before he (P.W.3) could complete his certificate the accused rushed into his room to take his confession. P.W.1 also said that when the accused came out of the Magistrate's Chambers he told him (P.W.1) that he wanted to destroy the confession which he had just made. To my mind, such conduct is inconsistent with the assurance purported to have been given by the accused to the Magistrate P.W.3 which led him to believe that the confession was free from the taint of any inducement or promise.

In view of the evidence before me, I cannot say that I am satisfied that the accused's confession to the Magistrate was freely and voluntarily given. I therefore rule that the second admission to P.W.3 is also inadmissible.

Rule accordingly.

Solicitors: *Joseph & Son.*